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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 1st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 August 1999, at 10.30 a.m.

Temporary Chairman: Mr. GUISSÉ

Chairman: Mr. HATANO

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The meeting was called to order at 10.35 a.m.

OPENING OF THE SESSION

1. The TEMPORARY CHAIRMAN, having declared the session open, expressed his pleasure at having enjoyed the privilege of serving as Chairman of the Sub-Commission at its fiftieth session, which had taken place at a time when extensive reforms were in active progress throughout the organizations of the United Nations system. A fruitful exchange of views had been held in both plenary meetings and informal consultations and there had been a number of positive achievements by the Sub-Commission, particularly in the establishment of standards and the formulation of human rights policies.

2. The Sub-Commission was an open, adaptable body in which the free expression and discussion of new ideas could take shape in proposals with a positive impact on the work of other United Nations bodies in the human rights field. All organizations must at some time face the need for reforms, which must, however, be objective and necessary. He had confidence in the future of United Nations institutions in the human rights field. Such bodies as the Sub-Commission were not merely forums for debate but also places in which calm reflection could lead to wise and far-reaching decisions.

3. Before handing over to his successor as Chairman, he wished to thank all those whose support had facilitated his completion of his own task as Chairman. Before proceeding to consider the first item of the provisional agenda, he invited the United Nations High Commissioner for Human Rights to address the Sub-Commission.

4. Mrs. ROBINSON (United Nations High Commissioner for Human Rights) said that the importance of the Sub-Commission's role in expanding United Nations human rights activities was emphasized by its new and more comprehensive title. The Sub-Commission functioned as a genuine think-tank by examining in detail the large issues of human rights and making recommendations that shaped the debate on how best to protect them. She particularly welcomed the participation of non-governmental organizations (NGOs), which could make a valuable contribution to the Sub-Commission's work.

5. The past year had witnessed many abuses of human rights around the world, which was all the more regrettable in that they had occurred in the fiftieth anniversary year of the Universal Declaration of Human Rights. Two examples stood out by the massive scale of the abuses perpetrated, although they had attracted widely disparate amounts of international attention and resources. In response to the magnitude of the Kosovo crisis, she had redeployed human rights officers to gather information about violations, had reported regularly to the Commission and had paid two personal visits to the region. Her Office was continuing coordinated work with its partners to ensure that human rights were at the core of humanitarian assistance and the rebuilding of democratic structures in the post-conflict period.

6. The Memorandum of Understanding established with the Federal Republic of Yugoslavia would have an important role to play in that country's evolution towards proper respect for the rule of law and of human rights. She was also

working closely with the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and other United Nations agencies in seeking a long-term solution of human rights issues in the Balkans as a whole.

7. In stark contrast to the attention attracted by the events in Kosovo were the deadly conflicts taking place in Sierra Leone, her visit to which in June had taken place when peace talks had reached a critical stage. The cruelty and violence committed there against civilians, including women and children, she had found deeply shocking. She had urged the importance of immediate international help in re-establishing a human rights culture, and had pledged her Office's support for the establishment of an independent national human rights institution and a Truth and Reconciliation Commission. She had also called for the establishment of a Commission of Inquiry to investigate violations of human rights and humanitarian law.

8. Among the positive developments of the past months had been the events marking the tenth anniversary of the Convention on the Rights of the Child, which had included a valuable discussion of the question by the Commission on Human Rights, and the adoption of an International Labour Organization (ILO) Convention outlawing the worst forms of child labour. More recently, the Economic and Social Council had held a special dialogue on children in which the voices of children as well as that of the Secretary-General had been heard.

9. Another significant achievement had been the adoption by the General Assembly in December 1998 of the United Nations Declaration on Human Rights Defenders - a subject which she was sure would be taken up by the Sub-Commission at its current session. The continuing vulnerability of defenders had been underlined by some recent sad events, such as the brutal killing of a Sri Lankan legislator a week previously. She was also encouraged by the increasing pace of regional cooperation and national capacity-building in human rights institutions. All those positive developments confirmed her belief that the challenge of making the protection of human rights a reality was, although formidable, achievable.

10. One of the greatest achievements of the past half century had been the building up of an impressive array of norms and legislation in the field of human rights, and the time had come for the main focus of attention to be shifted to implementation, a shift of emphasis that had important implications for the work of the Sub-Commission. Given the will and energy, she was convinced that the gap between rhetoric and reality could be bridged. The Sub-Commission could already point to impressive achievements, particularly in the field of standard-setting, an example being the draft declaration on the rights of indigenous peoples that was currently pending before the Commission.

11. The Sub-Commission had also played an important preparatory role in the creation of the thematic mechanisms of the Commission. It had originated the appointment of special rapporteurs on the freedom of information and expression, on the independence of the judiciary, and on religious intolerance and racism, and had played a part in the establishment of the Working Groups on Enforced or Involuntary Disappearances, and on Arbitrary Detention. One of its most significant contributions had been studies on economic, social and cultural rights, as well as on civil and political rights, a good example of

which was that dealing with human rights and extreme poverty, completed by the Sub-Commission in 1996. The specialized knowledge and skills of a number of Sub-Commission members had been recognized and utilized by the Commission and also by herself and her Office.

12. Recognizing the need to take account of structural and thematic changes in the field of human rights, and the shift of emphasis from standard-setting to implementation, the Sub-Commission would, she was convinced, respond positively to the calls made upon it in relation to four themes: preparation for the World Conference on Racism, concerning which two working papers prepared by its members were to be considered at the current session - one on the rights of non-citizens, and the other on globalization in the context of the increase in incidents of racism; the human rights dimension of globalization, the social, economic and political implications of which were only beginning to be grasped; the integration of human rights into business planning and policies, including the adoption of effective codes of human rights practices and methods to ensure their implementation; and the subject of economic, social and cultural rights and the right to development, regarding which the Sub-Commission had in recent years embarked upon a comprehensive set of studies.

13. In conclusion, she reiterated the importance she attached to the role of the Sub-Commission and the readiness of her Office to assist it not only during the session but throughout the year.

ORGANIZATION OF WORK (item 1 of the provisional agenda)

(a) ELECTION OF OFFICERS

14. Mr. FAN Guoxiang nominated Mr. Hatano for the office of Chairman.

15. Mr. KHALIFA and Mrs. WARZAZI seconded the nomination.

16. Mr. Hatano was elected Chairman by acclamation.

17. Mr. Hatano took the Chair.

18. The CHAIRMAN invited nominations for the offices of Vice-Chairman.

19. Mr. SIK YUEN proposed Mr. Mehedi.

20. Mr. KARTASHKIN proposed Mr. Ramashvili, who had unfortunately been unable to attend the first meeting of the session.

21. Mrs. DAES proposed Mr. Bossuyt.

22. Mr. Mehedi, Mr. Ramashvili and Mr. Bossuyt were elected Vice-Chairmen by acclamation.

23. Mr. JOINET said he wished to place on record the fact that the decision to elect a member of the Sub-Commission to the office of Vice-Chairman *in absentia* constituted an exceptional and unprecedented step.

24. Mr. ALFONSO MARTÍNEZ nominated Mr. Pinheiro for the office of Rapporteur.

25. Mr. Pinheiro was elected Rapporteur by acclamation.

26. The CHAIRMAN said that he was honoured to have been elected Chairman of the fifty-first session and particularly grateful to his fellow members of the Sub-Commission for deciding to change the order of rotation of the chairmanship among the members from the different regions in order to accommodate him. He had been prevented by a surgical operation from attending the Sub-Commission's previous session and the Asian and African members had so arranged matters that his absence had not deprived him of the opportunity to preside over the proceedings.

27. Turning to the issue of implementation of the human rights treaties, he said that the United Nations system, including the Sub-Commission, had a commendable record in terms of human rights standard-setting: 24 human rights treaties had come into force following ratification by a large number of States. It was a regrettable fact, however, that the treaties had not been satisfactorily implemented and that the States parties had not fully complied with their provisions.

28. For example, although 191 States had acceded to the Convention on the Rights of the Child, the children of the world were still being denied the right to attend school and to enjoy a healthy life. Apart from the refugee children of Kosovo, Rwanda and other conflict areas, many children were still starving, forced to toil under unhealthy conditions instead of attending school, exploited for prostitution and pornography, and even conscripted into armed forces by Governments or anti-government groups.

29. Torture was another example. He spoke as a member of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, which subsidized the non-profit-making organizations and institutions that looked after surviving torture victims in various parts of the world. According to information received from those sources, torture was still being systematically practised by 134 Governments, many of which were parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

30. It was imperative therefore to promote and secure the full implementation of the existing human rights instruments by both Governments and non-governmental groups in the years to come.

31. In the past, the term "non-State actors" had been almost synonymous with "non-governmental organizations" (NGOs), bodies which were an important source of information regarding human rights violations around the world and which had recently played a vigorous role in events such as the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. The Sub-Commission and the United Nations system as a whole would clearly continue to depend heavily on NGOs in the future.

32. It was important, however, to differentiate between NGOs that were constructive and cooperative and "anti-governmental organizations", including terrorists and extremists. Moreover, large-scale private industries and enterprises, many of which were "transnational", must be recognized as significant new "non-State actors" in international affairs. It was essential to enlist their cooperation in addressing human rights issues, concerning the environment for example, and sometimes to advocate a measure of restraint, inducing or persuading them to look beyond profit-making and consider the benevolent role they could play on behalf of the world as a whole.

33. Although it was often argued that there should be no order of priority among human rights, conflicts sometimes arose between two or more human rights provisions. The human rights treaties adopted over the past 50 years had well-nigh filled up the available terrain. Any new edifice would inevitably affect the structures already in place. For example, the Convention on the Elimination of All Forms of Discrimination against Women required States parties to take action against "customary and all other practices" based on "stereotyped roles for men and women". Stereotyped roles persisted, however, in many indigenous communities and the draft United Nations Declaration on the Rights of Indigenous Peoples, approved by the Sub-Commission in 1993, enjoined respect for the traditions, customs and practices of indigenous peoples. The question therefore arose as to whether an exception was to be made for indigenous peoples and, if so, whether other minorities which had similar traditions, customs and practices were also entitled to exceptions. As such conflicts between human rights principles were likely to arise more frequently in the future, ways of addressing the sensitive issue of an order of priority or even a hierarchy among human rights would have to be found.

34. The Bureau of the Commission on Human Rights had recently proposed a drastic "restructuring" of the Sub-Commission. The recent decision by the Economic and Social Council to change the title of the Sub-Commission formed part of that proposal. Other parts included: a reduction in the number of experts from 26 to 15; nomination of the experts by the Chairman of the Commission, in consultation with the other members of the Bureau, instead of election by the Commission; restriction of the term of office of experts to a maximum of 8 years; prohibition of concurrent employment of experts by the administrative branch of their Governments; abolition of the system of alternates; a reduction of the length of the Sub-Commission's session from four to two weeks; withdrawal of the Sub-Commission's mandate under the procedure established by Economic and Social Council resolution 1503 (XLVIII); abolition of the Working Group on Indigenous Populations once the permanent forum for indigenous people was established; and replacement of the Working Group on Contemporary Forms of Slavery by a special rapporteur.

35. That should be enough to alert the members of the Sub-Commission to the "drastic" nature of the proposal, which had discouraged him from commenting further on the existing shape of the Sub-Commission and its role and functions in the twenty-first century.

36. Mr. MEHEDI, speaking on behalf of the African members of the Sub-Commission, expressed his condolences to the Moroccan expert, Mrs. Warzazi, on the death of His Majesty Hassan II, King of Morocco.

37. The CHAIRMAN, adding his condolences to those of Mr. Mehedi, said that the funeral of King Hassan II had brought together many influential world figures and had, perhaps, contributed to the achievement of a peaceful settlement in the Middle East.

(b) ADOPTION OF THE AGENDA (E/CN.4/Sub.2/1999/1)

38. The provisional agenda was adopted.

(c) METHODS OF WORK OF THE SUB-COMMISSION

39. The CHAIRMAN drew attention to Commission on Human Rights resolution 1999/81, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", pursuant to paragraph 11 of which he invited the Chairperson of the Commission to address the Sub-Commission.

40. Ms. ANDERSON (Ireland), Chairperson of the Commission on Human Rights, said that while the Commission's debate on its agenda item 16, entitled "Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", had been a brief one, it had resulted in the adoption of a cogent and substantive resolution (resolution 1999/81), which took note of the Sub-Commission's work; reaffirmed how best it could help the Commission; welcomed and invited it to enhance the steps it had taken to reform and improve its working methods; invited it to continue its efforts to avoid duplication with the Commission; and requested it to improve further its methods of work. It went on to request States to ensure that they nominated independent experts of recognized human rights competence, and invited the Secretary-General to provide the Sub-Commission with the necessary technical support. Finally, it requested the Sub-Commission to devote sufficient time at its fifty-first session to discussion of its working methods, and authorized it to hold not more than 30 public meetings during the session.

41. The resolution thus sent a mixed message. The Commission recognized the Sub-Commission's achievements and its efforts to improve its work, while indicating that it felt that there was significant scope for further improvement.

42. The Commission's debate under its agenda item 20, entitled "Rationalization of the work of the Commission", had been intimately linked to its discussions under agenda item 16. The outcome of the discussion on item 20 had been a consensus statement by the Chair setting out the agreements reached on a limited number of issues and remitting a number of tasks to an inter-sessional working group. With regard to the Sub-Commission, agreement had been reached on the change in its name, and the working group had been asked to draw up recommendations for further change, focusing on the role and mandate of the Sub-Commission, its composition, and questions of effectiveness and efficiency, including the duration of meetings. The working group was scheduled to hold three one-week meetings before the fifty-sixth session of the Commission.

43. It was impossible to read the relevant submissions to the Bureau of the Commission without becoming aware of a number of problems in the relationship

between the Commission and the Sub-Commission. From the Sub-Commission's own submission, it was apparent that it felt itself to be misunderstood and undervalued by the Commission; while a number of governmental submissions implied considerable frustration at the direction taken by some of the Sub-Commission's work in recent years. The inter-sessional working group was thus faced with a considerable challenge in its discussion on the Sub-Commission. While no decisions on modalities had yet been taken, it was likely that the working group would wish to hear directly from a representative of the Sub-Commission in the course of its work.

44. In addition to various general requests, resolution 1999/81 contained specific requests concerning a work plan and working methods, a more selective approach to studies and the need to limit the number of working groups, based on a recognition that, in the current budgetary climate, prioritization was essential. The resolution also touched on the sensitive issues of independence, impartiality and expertise, implying that more could be done to safeguard the independence of members - a matter concerning which Governments too had key responsibilities. Lastly, it touched on the problem of ensuring efficient and effective participation of NGOs in a spirit of responsible and constructive partnership.

45. In considering what should be the guiding themes for its fifty-first session, the Sub-Commission might wish to reflect on the notion of "taking responsibility", which she had proposed as a guiding theme for the Commission at its fifty-fifth session. All the various parts of the United Nations human rights machinery had their different roles to play, and the task for each was to attempt to do the right thing within its own area of responsibility. That task required dedication and discipline - qualities that were not always easy to reconcile.

46. Mr. ALFONSO MARTINEZ said that the proposals contained in recommendation 12 of the report of the Commission's Bureau at its fifty-fourth session (E/CN.4/1999/104) regarding the work of the Sub-Commission had been one of the most controversial issues facing the Commission in its debate under its agenda item 20. The Sub-Commission should react to those proposals, not defensively, but with a view to identifying the rationale behind the proposed changes and ascertaining whether they would be for the better. The question of the methods of work of the Sub-Commission raised important practical issues calling for in-depth debate, either under the current agenda item or, possibly, within an ad hoc working group. The Bureau should consider how the Sub-Commission could best engage in such an in-depth debate, which was crucial to its very future, and should submit a recommendation on the matter to the Sub-Commission at its next meeting.

47. Mr. EIDE said that, in a period when United Nations human rights mechanisms were moving from a phase of standard-setting to one in which the harsh realities of human rights were being confronted, it was hardly surprising that there were widely differing views on how best to address those realities. Strained relations between the Commission and the Sub-Commission were nothing new. In 1950, the Commission had decided to abolish the Sub-Commission - a decision endorsed by the Economic and Social Council but subsequently overturned by the General Assembly. Part of the problem was that

the messages from the Commission concerning the role it expected of the Sub-Commission had always been mixed. Nonetheless those messages should be heeded.

48. Careful thought must be given to what might be an appropriate mandate for the retitled Sub-Commission. The suggestions that had been made by the High Commissioner for Human Rights regarding the appropriate themes - racism, globalization, business and human rights, economic and social rights and the right to development - were all very valuable: in a process of globalization in which the role of the State was being weakened, it was important to consider what role the transnational corporations could and should play in the promotion of human rights.

49. Mr. JOINET said that the High Commissioner had been right to stress that implementation was henceforth the priority - an idea that was also expressed in paragraph 5 of Commission Resolution 1999/81. The question was thus what techniques should be employed to improve implementation. Attempts to ensure compliance with standards required denunciation of violations, whereas implementation called for technical assistance and cooperation. In recent years the emphasis seemed to have shifted from the former to the latter activity.

50. In the last analysis, however, violations persisted and the question had to be asked whether it was possible to develop a cooperation programme with a State that violated human rights. The Commission appeared to wish the Sub-Commission to adopt fewer resolutions on human rights situations in specific countries. In exceptional cases, however, denunciation of violations could still be an important component of an implementation-oriented policy.

51. Mr. BOSSUYT said that the Commission's frustrations with the Sub-Commission were not new, and both organs should recognize that they were dealing with the same problems. The lack of understanding on the part of the Commission might be lessened if more heads of delegations attended the meetings of the Sub-Commission. The two organs reflected the world as it was and they operated in a political environment that gave rise to many problems. It was, after all, the Governments which nominated candidates for membership of the Sub-Commission, and the Commission that elected them. The Sub-Commission had asked for its name to be changed as long ago as 1985, and the new name certainly corresponded more accurately to the work it was doing.

52. In its closed meetings, the Sub-Commission would be dealing with the report of the Working Group on Communications established pursuant to Economic and Social Council resolution 1503 (XLVIII), and it might face criticism if it were seen to be spending more time discussing its own methods of work than the situation of human rights in the world. It would be a useful exercise in reducing misunderstanding if the High Commissioner for Human Rights and the Chairperson of the Commission were able to attend the closed meetings of the Sub-Commission.

53. Mr. KARTASHKIN said that the Commission's proposals to expand the Sub-Commission's functions and at the same time reduce the length of its sessions and the number of its experts were contradictory and in practical terms mutually exclusive. The Sub-Commission should work out its own

proposals for improving its methods of work, and then send a representative to the inter-sessional working group to convey those proposals and play an active part in the group's deliberations.

Minute of silence in honour of victims of all forms of violations of human rights in all regions of the world

54. The CHAIRMAN said that, by its decision 1994/103, as orally amended in 1997, the Sub-Commission had decided to observe at the commencement of each of its annual sessions a minute of silence in honour of victims of all forms of violations of human rights in all regions of the world.

55. The members of the Sub-Commission observed a minute of silence.

56. Mr. LEBAKINE (Secretary of the Sub-Commission) said that, of the 25 documents so far received by the Secretariat, 12 were available in all languages. He reminded the Sub-Commission of the General Assembly rule that documents could not be distributed until they were available in all the official languages.

57. Mr. JOINET said that there should be some flexibility in applying the rule of simultaneous distribution. Clearly, no document should be discussed until it was available in all languages, but surely there could be an agreement within the Sub-Commission that documents could be distributed once they were available in the three working languages.

58. Mr. LEBAKINE (Secretary of the Sub-Commission) said that it was not within the competence of the Sub-Commission or the Secretariat to modify a decision of the General Assembly.

59. Mrs. WARZAZI said that, while she fully supported the decision taken by the General Assembly, the Sub-Commission was a group of experts, not a group of politicians, and she suggested that the Secretariat should consult the Legal Adviser as to whether, exceptionally, documents could be distributed in the three working languages, as was done in the case of working groups.

60. Mr. BOSSUYT said that there were two other exceptions which were applicable to the Sub-Commission. Its summary records and the documents covered by the terms of Economic and Social Council resolution 1503 (XLVIII) were made available in the three working languages.

The meeting rose at 12.55 p.m.